

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 312 OF 2023

Vijay Wamanrao Kamdi and anr__ Vs. __ Sub Divisional Officer and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. PS.Kadam, Advocate for petitioner
Mr. N.R.Patil, AGP for respondent nos. 1 and 2
Mr. R.A.Bhandakkar, Advocate for respondent Nos. 3 and 4

CORAM : AVINASH G. GHAROTE, J.
DATE : 15/06/2023

1] Heard Mr. Kadam, learned counsel for the petitioner, learned AGP for respondent nos. 1 & 2 and Mr. Bhandakkar, learned counsel for respondent nos.3 and 4.

2] The petition challenges the order dated 31.12.2021 passed by the Mamlatdar under Section 5 of the Mamlatdar Courts' Act holding that there is an approach way available to respondent nos.3 and 4 for approaching their land of Gat no. 381/2 from the eastern boundary/dhura of Gat no.380, which has subsequently been sub-divided into parts (Gat Nos. 380/1 and 380/2), which has been obstructed by the petitioner by digging a ditch and which has been directed to be refilled and the way to be restored.

3] Though it is contended by Mr. Kadam, learned counsel for the petitioner that there is no way, the spot inspection report dated 18.9.2021 (pg.55)

indicates otherwise. The further contention that there is an alternate way available for the respondent nos.3 and 4 to approach their field is not demonstrated on record, apart from which since the land of Gat no. 381/2 is adjacent to the forest land, on the south-west side, learned AGP upon instructions states that the Forest Department is in the process of constructing a wall on that side.

4] Since the way has been found to exist from the east boundary/dhura of old Gat no. 381, which is now sub-divided into Gat nos. 380, 380/1, 380/2, the respondent nos. 3 and 4 are entitled to use the same. The apprehension by Mr. Kadam, learned counsel for the petitioner that under the guise of using the road on the boundary, the respondent nos. 3 and 4 may use the land of Gat nos. 380, 380/1 and 380/2 is clearly misplaced, as what has been found is the existence of a road on the eastern boundary and not otherwise.

5] In view of the above position, I am not inclined to interfere in the impugned order. The petition is therefore dismissed. No costs.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
Location:
Signing Date:15.06.2023 16:51